### PATENT COOPERATION TREATY

# **PCT**

# INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference 0000054711	FOR FURTHER ACTION	See item 4 below
International application No. PCT/EP2004/007255	International filing date (day/month/year) 03 July 2004 (03.07.2004)	Priority date (day/month/year) 22 July 2003 (22.07.2003)
International Patent Classification (8th See relevant information in Form P	edition unless older edition indicated) PCT/ISA/237	
Applicant SUNGENE GMBH & CO. KGaA		

1.	This international preliminary re International Searching Authorit	port on patentability (Chapter I) is issued by the International Bureau on behalf of the yunder Rule $44Ms.1(a)$ .
2.	This REPORT consists of a total	of 7 sheets, including this cover sheet.
		nce to the written opinion of the International Searching Authority should be read as a reference eport on patentability (Chapter I) instead.
3.	This report contains indications	relating to the following items:
	Box No. I	Basis of the report
	Box No. II	Priority
	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
	Box No. IV	Lack of unity of invention
	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
	Box No. VI	Certain documents cited
	Box No. VII	Certain defects in the international application
	Box No, VIII	Certain observations on the international application
4.		mmunicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but makes an express request under Article 23(2), before the expiration of 30 months from the priority

	Date of issuance of this report 29 May 2006 (29.05.2006)
The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Authorized officer  Agnes Wittmann-Regis
Facsimile No. +41 22 740 14 35	Telephone No. +41 22 338 89 70

Form PCT/IB/373 (January 2004)

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From the INTERNATIONAL SEARCHING AUTHOR	птү		Talk						
To:			PCT Translation						
			TTEN OPINION OF THE ONAL SEARCHING AUTHORITY						
			(PCT Rule 43bis.1)						
		Date of mailing (day/month/year)							
Applicant's or agent's file reference 0000054711		FOR FURTHER A	CTION See paragraph 2 below						
International application No. PCT/EP2004/007255	International filing date (	day/month/year)	Priority date (day/month/year) 22.07.2003						
International Patent Classification (IPC) or both	national classification an	d IPC							
Applicant SUNGENE GMBH & CO. KG	SaA								
This opinion contains indications relat	ling to the following items	4							
Box No. I Basis of the	opinion								
Box No. II Priority									
Box No. III Non-establis	thment of opinion with reg	gard to novelty, inventi-	e step and industrial applicability						
1	y of invention								
	atement under Rule 43 <i>bis.</i> r; citations and explanation		ovelty, inventive step or industrial ment						
	Box No. VII Certain defects in the international application								
Box No. VIII Certain obsc	rvations on the internation	nal application							
2. FURTHER ACTION									
International Preliminary Examining	Authority ("TPEA") excep chosen IPEA has notified	et that this does not appl the International Bure	be considered to be a written opinion of the ly where the applicant chooses an Authority other an under Rule 66.1bis(b) that written opinions of						
If this opinion is, as provided above, written reply together, where approp PCT/ISA/220 or before the expiration	riste, with amendments,	before the expiration	, the applicant is invited to submit to the IPEA a of 3 months from the date of mailing of Form expires later.						
For further options, see Form PCT/IS.	A/220.								
For further details, see notes to Form	PCT/ISA/220,								
Name and mailing address of the ISA/EP		Authorized officer							
Facsimile No.		Telephone No.							

#### WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/EP2004/007255

1. With regard to the Integrange, the options has been established on the basis of the international application in the Integrange in which it will the suffice of the other holds of the international application in the Integrange in which it will the suffice of the other holds of a translation form the original language into the following Imparage  Rule 12.3 and 23.1(b)).  2. With regard to any materials and/or amino acid sequence disalenced in the international application and necessary to the claim investion, this equition has been established on the basis of:  a. type of material  a. expecse listing  table(t) related to the sequence listing  b. forms of material  in compoter residuable form  c. time of filing/turnishing  contained in host-property to this Authority for the prayones of search.  In middless, in the case that some than one version or copy of a sequence disting and/or table(t) relating thereto has been filed formidated, the required statements that the information in the subsequent or additional explication in the subsequent or additional copies is identical to that in the application as filed, as appropriate, were ferminded.  4. Additional comments:
Rule 123 and 23.1(0)).  which is the language of a translation furnished for the purposes of international service (under the 123 and 23.1(0)).  With regard to any material and another amino acid sequence disclosed in the international application and necessary to the claims investion, this epition has been established on the basis of:  a. type of material  a separace listing  able(c) related to the sequence listing  b. formus of material  is computer ranslable form  c. time of filing/translating  constanted in the international application as filed.  If their together with the international application is computer randable form.  formished subsequently to this Authority for the prayeous of search.  3. In addition, is the case that now than one version or copy of a sequence listing ansider table(c) relating thereto has been fixed framished, the respector subsects that the information in the absorpance or additional copies is identical to that in the septiments in the absorpance or in the absorpance or additional copies is identical to that in the septiments in the absorpance or additional copies is identical to that in the septiments in the absorpance or additional copies is identical to that in the septiments on the absorpance or additional copies is identical to that in the septiments on the absorpance are or additional copies is identical to that in the septiments on the absorpance are additional copies is identical to that in the septiments on the absorpance are additional copies in identical to that in the septiments on the absorpance are additional copies in identical to that in the septiments on the absorpance are additional copies in identical to that in the septiments of the absorpance are additional copies in identical to that in the septiments of the absorpance and the absorpance and the absorpance and the absorpance are additional copies in identical to that in the septiments of the absorpance and the absorpance and the absorpance and the absorpance are additional copies in identical to that in the
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investion, this opinion has been ortabilished on the basis of:  a. type of material  a sequence listing  table(a) related to the sequence listing  b. format of material  fin willies format  in computer enablable form  c. time of all implementables form  contained in the international application as filed.  filed together with the international application in computer readable form.  formithed subsequently to this Authority for the proposes of search.  formithed subsequently to this Authority for the proposes of search.  In addition, in the case that now than one version or copy of a sequence listing another table(a) relating thereto has been filed fromithed, the required saternations in the absorption of an in the subsequent or additional explicit in list of filed in the filed and application is the subsequence or additional explicit in list of list in the suppose or a selection of the supplication of filed as appropriate, were fireinhed.
a sequence listing  table(c) related to the sequence listing  b. format of material  As in written format  in computer enablable form  c. time of filing/humblable  contained in the international application as filed.  If the to upther with the international application in computer readable form.  formithed subsequently to this Authority for the prayerses of search.  In addition, in the case that now than one ventor or copy of a sequence initing anxiety table(c) relating thereto has been fixed furnished, the reprinced internation in the information in the subsequence or difficult or disting thereto has been fixed furnished, the reprinced internation in the information in the molecular or additional copies in identical to that in the sequence in the information in the reprinced internation in the subsequence or additional copies in identical to that in the sequence in the information in the molecular or additional copies in identical to that in the sequence were furnished.
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b. format of material  in written format  in compote readable form  it no compote readable form  c. time of alling/hormáning  contained in the international application as filed.  filed together with the international application in computer readable form.  formánded nobesquently to this Authority for the praposes of search.  In addition, in the case that more than one vestore or copy of a suppresse listing and/or table(s) relating thereto has been filed furnished, the required internates that the information is the absregared are additional copies is identical to fills in the pulsesquest care additional copies is identical to fills in the pulsesquest care additional copies is identical to fills in the spipilisation filled or does not go beyond the application as filed, as appropriate, were furnished.
in written formst in compose realables form  c. time of filing/threshabing c. time of filing/threshabing compose realable form  c. time of filing-threshabing composed to the international application as filed.  filed together with the international application in composer readable form.  formished subsequently to this Authority for the prayoness of search.  3. In addition, in the case that now than one version or copy of a supersec listing analor table(s) relating thereto has been filed firmished, the required interments that he information in the subsequent or additional copies is identical to that in the application filed or does not go beyond the application as filed, as appropriate, were frenished.
in computer randable form  c. time of filing/humidning  contained in the interestional application as filed.  filed together with the interestional application in computer rendable form.  firmished subsequently to this Auditority for the purposes of search.  formished subsequently to this Auditority for the purposes of search.  3. In addition, in the case that snowe than one version or copy of a sequence listing audior table(t) relating thereto has been filed firmished, the required statements that the information in the subsequent or additional copies is identical to filed in the application filed or does not go beyond the application as filed, as appropriate, were furnished.
c. time of filing/huminking  contained in the intermational application is filed.  filed together with the international application in computer readable form.  formithed noberogeneity to this Authority for the prayoner of search.  3. In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed fimilabed, the required satements that the information in the subsequent or additional copies is identical to fills in the application at filed, as appropriate, were furnished.
contained in the intermational application as filled.    filed together with the intermational application in computer condults form.   formitted indexequently to this Authority for the proposes of season.   in addition, in the case that more than one version or copy of a sequence listing another table(s) relating thereto has been fixed fromitted, the required saternoses that the information in the subsequently are additional copies is identical to filled in the application filled or does not go beyond the application as filed, as appropriate, were furnished.
ified together with the international application in computer module forms.  formithed indeengemently to this Authority for the prosposes of search.  In addition, in the case that some than one version or copy of a segment listing antifor table(s) relating flureto has been fixed furnished. The representations that the information is the absorption of the other case in identical to flutte in the proper search in the indeed record and filling or does not go beyond the application as filed, as appropriate, were formithed.
formished subsequently to this Authority for the preposes of search.
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familiand, the required statements that the information in the subsequent or additional copies is identical to that in the application filled or does not go beyond the application as filed, as appropriate, were familiared.
4. Additional communitar

#### WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

International application No. PCT/EP2004/007255

Box	No. II	Priority
1.	$\boxtimes$	The following document has not yet been furnished:
		copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
		translation of the earlier application whose priority has been claimed (Rule 43bis, 1 and 66.7(b)).
		Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date in the elaimed priority date.
2.		This opinion has been established as it no priority had been obliged due to the fact that the prairity claim has been funcal invalid (Roles 458/n) and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3.	Addi	itional observations, if nocessary:

	E-TORCOTTION		Ching Authoriti	PC1/EP2004/0072					
Box No, V	Ressoned stateme citations and expl	nt under Re	ule 43bis.1(a)(i) with regard to novelty, inven pporting such statement	tive step or industrial applicability;					
1 Stateme	nt								
New	olty (N)	Claims	1-18		YE				
		Claims	_		NO				
Invo	ntive step (IS)	Claims	1-18		YES				
		Claims			NO				
Indu	strial applicability (IA)	Claims	1-18		ve				
		Claims			_ NO				
	s and explanations:								
	-	nion	makes reference to th	e following					
docı	uments:								
			_						
	D1: WO 03/								
	D2: Kausch	et a	l., Plant Biol. (2001)	) vol. 2001: 151					
1.	1. Novelty and inventive step (PCT Article 33(2) and								
	33(3))			(-,					
	(-,,								
1.1	Claims 1 t	o 18							
			appear to be novel an	d inventive over					
	the cited		==						
	The promot	er wh	ich is used in claim	1 for preparing					
	a transger	ic ex	pression cassette for	the					
	-		xpression of two nucl						
			nown in the prior art						
			1), SEQ ID NO:1). On						
			s bidirectional promo						
	have been	known	(see, e.g., Kausch e	t al. (D2)).					
			pression cassette for						
			xpression of two nucl						
			the expression being						
	-		oter as depicted in S	_					

#### WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/EP2004/007255

Box No. V	Re cit:	soned :	statemeni nd explai	t under	Rule	43bis.	1(a)(i) w	ith regard to ement	novelty,	inventiv	e step or	industrial	applicability;
								cited					
	art	re	nder	it	obv	/i0	us.						

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

International application No. PCT/EP2004/007255

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

### Clarity (PCT Article 6)

### 2.1 Claims 1 and 13

A "regulatory sequence" is mentioned in the second and third lines in claims 1 and 13, respectively, whereas item d) refers to "said regulatory element". In order to avoid uncertainties, a uniform nomenclature should be used.